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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KATHLEEN KENNEDY, on behalf of  
herself and all others similarly situated,

Plaintiff,

VS.

WELLS FARGO BANK, N.A., d/b/a  
WELLS FARGO HOME  
MORTGAGE and DOES 1-10.

## Defendants.

Case No.

Case No. **CV11 04635 PDP (AGRx)**

**COMPLAINT FOR: (1) BREACH  
OF CONTRACT; (2) VIOLATION  
OF THE ROSENTHAL FAIR  
DEBT COLLECTION PRACTICES  
ACT; (3) VIOLATION OF THE  
UNFAIR COMPETITION LAW; (4)  
BREACH OF THE COVENANT OF  
GOOD FAITH AND FAIR  
DEALING; (5) NEGLIGENCE;  
AND (6) PROMISSORY  
ESTOPPEL.**

**(Class Action)**

## JURY TRIAL DEMANDED

1 Plaintiff Kathleen Kennedy, on behalf of herself and all others similarly  
 2 situated, alleges the following upon information and belief based upon personal  
 3 knowledge.

4 **I. INTRODUCTION**

5 1. This Court has subject matter jurisdiction over this action under 28  
 6 U.S.C. § 1332(d)(2).

7 2. The Home Affordable Modification Program (“HAMP”), introduced  
 8 in February of 2009 as part of President Obama’s Making Home Affordable  
 9 Initiative, was intended to modify three to four million mortgages by the end of  
 10 2012. As of February 2011, only about 550,000 permanent loan modifications  
 11 were in place.<sup>1</sup>

12 3. HAMP was initiated to aid the millions of homeowners who are  
 13 struggling to pay their mortgages due to the economic downturn and unanticipated  
 14 drop in property values that have occurred during the past few years. Banks that  
 15 received federal funding from the Troubled Asset Relief Program (“TARP”) are  
 16 contractually obligated to participate in HAMP. Under HAMP, banks are  
 17 required to offer loan modifications to eligible borrowers to prevent foreclosures  
 18 and allow them to keep their homes.

19 4. Defendant Wells Fargo Bank, N.A., d/b/a Wells Fargo Home  
 20 Mortgage (“Wells Fargo”), received \$25 billion in TARP funds in 2008. In  
 21 exchange for the funds, Wells Fargo agreed to participate in HAMP.

22 5. Plaintiff Kathleen Kennedy is a California resident who faced  
 23 unexpected expenses and had trouble making her mortgage payments. She was  
 24 eligible for a HAMP loan modification for her Wells Fargo-serviced home  
 25 mortgage and diligently cooperated with Wells Fargo to obtain a permanent loan  
 26 modification. Ms. Kennedy was offered, and accepted, a Trial Payment Plan

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27 28 <sup>1</sup> February 2011 Servicer Performance Report, available at  
 http://www.treasury.gov/initiatives/financial-stability/results/MHA-  
 Reports/Documents/Febr%202011%20MHA%20Report%20FINAL.pdf.

1 ("TPP"). She complied with her responsibilities under the TPP, but Wells Fargo  
2 refused to convert that plan to a permanent modification.

3       6. Plaintiff's experience with Wells Fargo is one that has been shared by  
4 hundreds of thousands of homeowners struggling to pay their mortgages. Despite  
5 agreeing to follow the HAMP guidelines in exchange for billions of dollars in  
6 taxpayer TARP funds, Wells Fargo has repeatedly and systematically flouted  
7 HAMP guidelines, and has intentionally misled thousands of homeowners in a  
8 loan modification process that amounts to little more than a black hole.  
9       Homeowners who request to be evaluated for a modification under HAMP  
10 routinely face unexplained delays, and go months with no communication from  
11 Wells Fargo after providing all the information it requests. Homeowners who  
12 attempt to contact Wells Fargo by telephone are placed on hold for hours and are  
13 transferred back and forth between different representatives, who typically  
14 provide conflicting information and instructions. Worse yet, almost without fail,  
15 homeowners mail or fax requested information to Wells Fargo (often by certified  
16 mail), only to be falsely told by Wells Fargo that it did not receive the requested  
17 information.

18       7. Many homeowners are told that they qualify for a trial period plan,  
19 but are never sent an official trial plan agreement. Wells Fargo regularly tells  
20 homeowners they qualify for a trial payment, orally or via e-mail, tells them the  
21 amount, and tells them to begin paying, but never sends a written trial plan  
22 agreement. In such instances, even after the homeowner makes the trial  
23 payments, Wells Fargo later denies that the homeowner was ever eligible for a  
24 trial plan, or the HAMP program. For those who are fortunate enough to receive a  
25 written HAMP trial plan agreement, and who comply with all terms of the trial  
26 plan, Wells Fargo routinely denies permanent modification, without justification  
27 or the requisite written notification.

28       8. Simply put, Wells Fargo intentionally has set up its loan modification

1 program to fail. It instituted a program in order to feign compliance with HAMP,  
2 but has never had any intention of allowing widespread modification for  
3 homeowners in need. The statistics reflect this reality. In February 2011, the  
4 HAMP Servicer Performance Report reported that Wells Fargo had initiated only  
5 219,424 HAMP trial modifications nationally since HAMP's inception, and that  
6 out of that number, only 77,402, or about 35 percent, had received permanent loan  
7 modifications. Out of the 219,424 HAMP trial modifications started, only 15,379,  
8 or 7 percent, were in active trial modifications as of February 2011. Based on  
9 these figures, the conclusion follows that over 100,000 Wells Fargo borrowers  
10 were approved for trial modifications but did not receive permanent loan  
11 modifications.

12 9. Plaintiff Kathleen Kennedy therefore brings this suit on behalf of  
13 herself and all similarly situated borrowers in the nation to challenge the failure of  
14 Wells Fargo to honor its agreement under HAMP to modify mortgages and  
15 prevent foreclosures.

16 **II. JURISDICTION**

17 10. This Court has subject matter jurisdiction over this action under 28  
18 U.S.C. § 1332(d)(2) in that the matter is a class action wherein the amount in  
19 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
20 costs, and members of the class are citizens of a state different from Wells Fargo.

21 11. This Court has personal jurisdiction over the parties in this action  
22 because Wells Fargo is headquartered in California, is licensed to do business in  
23 the state of California, and otherwise conducts business in the state of California.

24 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)  
25 because the wrongful and unlawful practices are alleged to have been committed  
26 in this District; Wells Fargo resides in California and in this District within the  
27 meaning of 28 U.S.C. § 1391(c); and Wells Fargo regularly conducts business in  
28 this District.

1       **III. PARTIES**

2       13. Kathleen Kennedy is, and at all times mentioned herein was, a  
 3 resident of Hawthorne, California. Plaintiff is the sole owner of a single-family  
 4 home in Hawthorne, California, and the home is her principal place of residence.

5       14. Wells Fargo is and at all times relevant hereto was a mortgage lender  
 6 headquartered in San Francisco, California, and doing business nationwide.

7       15. The true names and capacities of the Defendants sued herein as Doe  
 8 Defendants 1 through 10, inclusive, are currently unknown to Plaintiff, who  
 9 therefore sues such Defendants by fictitious names. Each of the Defendants  
 10 designated herein as a Doe is legally responsible for the unlawful acts alleged  
 11 herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true  
 12 names and capacities of the Doe Defendants when such identities become known.

13       **IV. FACTUAL ALLEGATIONS**

14       **A. The Foreclosure Crisis**

15       16. For the past three years, the United States has been in a foreclosure  
 16 crisis. Approximately five million homes have been foreclosed since 2009, and  
 17 the Federal Reserve expects over four million more foreclosures by 2012.

18       17. The foreclosure crisis “continues unabated,” as the Congressional  
 19 Oversight Panel stated. “The number of foreclosures remains extremely high,  
 20 with approximately 250,000 foreclosure starts and over 100,000 foreclosure  
 21 completions per month.”<sup>2</sup>

22       **B. HAMP**

23       18. Congress passed the Emergency Economic Stabilization Act of 2008,  
 24 12 U.S.C. §§ 5201, *et seq.*, on October 3, 2008 and amended it with the American  
 25 Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, on  
 26 February 17, 2009 (together, the “Act”).

27       2 Congressional Oversight Panel, *December Oversight Report: A Review of*  
 28 *the Treasury’s Foreclosure Prevention Program* (Dec. 14, 2010) (available online  
 at <http://cop.senate.gov/documents/cop-121410-report.pdf>).

1       19. The purpose of the Act was to grant the Secretary of the Treasury  
2 authority to restore liquidity and stability to the financial system, and to ensure  
3 that such authority is used in a manner that “protects home values” and “preserves  
4 homeownership.” 12 U.S.C. § 5201.

5       20. The Act granted the Secretary of the Treasury the authority to  
6 establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. §§ 5211, *et*  
7 *seq.* Under TARP, the Secretary may purchase or make commitments to purchase  
8 troubled assets from financial institutions. *Id.* Congress allocated up to \$700  
9 billion to the Treasury for TARP. 12 U.S.C. § 5225.

10       21. The Act further mandates, with regard to any assets acquired by the  
11 Secretary of the Treasury that are backed by residential real estate, that the  
12 Secretary “shall implement a plan that seeks to maximize assistance for  
13 homeowners” and use the Secretary’s authority over servicers to encourage them  
14 to take advantage of programs to “minimize foreclosures.” 12 U.S.C. § 5219.  
15 The Act grants authority to the Secretary of the Treasury to use credit  
16 enhancement and loan guarantees to “facilitate loan modifications to prevent  
17 avoidable foreclosures.” *Id.*

18       22. On February 18, 2009, pursuant to their authority under the Act, the  
19 Treasury Secretary and the Director of the Federal Housing Finance Agency  
20 created the Making Home Affordable (“MHA”) initiative to help at-risk  
21 homeowners avoid foreclosure by restructuring their mortgages.

22       23. The Home Affordable Modification Program, or HAMP, is the  
23 portion of the MHA initiative that provides mandatory directives for  
24 implementation, and the portion with which Wells Fargo has not complied.  
25 HAMP creates a uniform loan modification protocol and provides financial  
26 incentives for participating servicers to modify loans. The Treasury Department  
27 has allocated at least \$75 billion in federal funds to HAMP, of which at least \$50  
28 billion is TARP money, to keep up to three to four million homeowners in their

1 homes by 2012.

2 24. According to the Making Home Affordable Program Servicer  
 3 Performance Report for February 2011, there were about 1.4 million HAMP-  
 4 eligible delinquent borrowers in the United States as of February 28, 2011.

5 **C. Wells Fargo's HAMP Obligations**

6 25. Because Wells Fargo accepted \$25 billion in federal funds, it was and  
 7 is required to participate in HAMP for the loans on which it functions as a loan  
 8 "servicer." Michael J. Heid, who was at the time of signing Co-President of Wells  
 9 Fargo, executed a Servicer Participation Agreement ("SPA") with the federal  
 10 government on April 13, 2009, making official Wells Fargo's participation in  
 11 HAMP, and binding it to comply with the HAMP procedures.

12 26. On March 16, 2010, Michael J. Heid, as Executive Vice President of  
 13 Wells Fargo, signed an Amended and Restated SPA, thereby affirming Wells  
 14 Fargo's participation in HAMP and its commitment to comply with the HAMP  
 15 procedures.

16 27. The SPAs executed by Mr. Heid explicitly incorporate all "guidelines  
 17 and procedures," as well as all "supplemental documentation," "instructions,"  
 18 "bulletins," "letters," "directives," or "other communications" (generally referred  
 19 to as "Supplemental Directives") issued by the Treasury, Fannie Mae or Freddie  
 20 Mac in connection with HAMP. These documents together are referred to as the  
 21 "Program Documentation," and are incorporated by reference herein. The SPAs  
 22 mandate that a Participating Servicer "shall perform" the activities described in  
 23 the Program Documentation "for all mortgage loans it services."

24 **1. Borrower Eligibility for HAMP**

25 28. Under HAMP, Wells Fargo is required to calculate whether, by  
 26 taking certain modification steps, such as reducing the interest rate or extending  
 27 the term of the loan, the borrower's monthly mortgage payment can be reduced to  
 28 31% of the borrower's monthly income.

1        29. If so, Wells Fargo must then perform a “net present value”  
 2 (hereinafter, “NPV”) analysis, comparing the net present value of cash flow from  
 3 these modified loan terms to the NPV of the loan without modification.

4        30. If the NPV test yields a “positive” outcome (*i.e.*, the value of  
 5 performing a loan modification exceeds the value of foreclosing on a property),  
 6 the servicer is required to offer a trial modification, or TPP, under HAMP. If the  
 7 NPV test yields a “negative” outcome (*i.e.*, the value of foreclosing on the  
 8 property exceeds the value of performing a loan modification), Wells Fargo may  
 9 perform the loan modification in its discretion, and is required to consider the  
 10 borrower for other foreclosure prevention measures.<sup>3</sup>

11        31. For requests for modification initiated prior to June 1, 2010, such as  
 12 Ms. Kennedy’s, servicers had the option to perform an initial evaluation before  
 13 receiving verified documentation of income. In this initial evaluation, servicers  
 14 performed the NPV test based on an unverified verbal report of information from  
 15 the borrower and verified the information during or after the TPP. Servicers  
 16 would then conduct an additional NPV test using the verified information, but  
 17 only if the verified information did not match the undocumented information  
 18 initially provided.

19            **2. Trial Period Plan**

20        32. The TPP consists of a three-month period in which the borrower  
 21 makes payments based on adjusted loan terms derived from the steps that HAMP  
 22 requires a servicer to follow.

23        33. Wells Fargo offers TPPs to eligible homeowners through a TPP  
 24 Contract, which describes the homeowner’s duties and obligations. The TPP  
 25 Contract promises a permanent HAMP modification for those homeowners who  
 26 make the required payments under the plan and fulfill documentation

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27            <sup>3</sup> If Wells Fargo is servicing the mortgage on behalf of a third-party  
 28 investor, it must have the investor’s permission to modify a mortgage loan when  
 the NPV test is negative.

1 requirements.

2       34. If the homeowner makes all the TPP monthly payments and satisfies  
3 all other trial period requirements, including properly verifying his or her  
4 household income, then the second stage of the HAMP process is triggered, and  
5 Wells Fargo must offer the homeowner a permanent modification.

6       **D. WELLS FARGO'S PRACTICES**

7       35. Wells Fargo routinely has failed to comply with its requirements and  
8 responsibilities under HAMP and under its TPP Contracts.

9       36. Throughout the HAMP application process, Wells Fargo repeatedly  
10 and inappropriately demands that borrowers update their application materials,  
11 while warning homeowners that their modification is at risk and threatening to  
12 deny the modification if they fail to comply with Wells Fargo's requests.  
13 Typically, Wells Fargo requests the same document(s) over and over. In other  
14 instances, it requests documentation that is irrational or impossible to obtain.  
15 Wells Fargo's demands that borrowers submit duplicative or unnecessary  
16 documentation creates opportunities for Wells Fargo to reject otherwise eligible  
17 borrowers for permanent modifications. The requests for documents are  
18 unnecessary, duplicative, burdensome, and harassing.

19       37. Wells Fargo routinely has failed to comply with the HAMP  
20 guidelines and offer permanent modifications to qualifying homeowners, instead  
21 stringing them along for months and months in trial modifications, or with no  
22 guidance whatsoever.

23       38. Wells Fargo's failure to comply with its obligations under HAMP  
24 and its TPP Contracts, and its failure to comply with the written and oral  
25 representations described above, have serious consequences for borrowers.

26       39. A homeowner's total unpaid balance increases each month that he or  
27 she is making trial payments. Trial payments are less than the amount ordinarily  
28 due under the mortgage. The rest of the amount that would ordinarily be due—in

1 most cases, primarily interest—is not waived. Instead, the remainder of the  
 2 ordinary payment is “recapitalized,” or added to the unpaid loan balance at the end  
 3 of the trial period. If the TPP lasts three months, only three months’ worth of the  
 4 difference between the trial and regular payments is added to the unpaid balance.  
 5 If the TPP continues longer than three months, however, homeowners may find  
 6 that six, seven, eight or more months’ differential has been added to the loan  
 7 balance. The more Wells Fargo delays, the more the homeowners owe.

8       40. Each trial payment has negative credit consequences. Although  
 9 borrowers are paying all that Wells Fargo is asking them to pay—an amount that  
 10 will match their payments under a permanent modification—their accounts are not  
 11 reported as current to credit scoring agencies. The more months a borrower  
 12 spends in limbo, the more months the borrower’s account is reported as  
 13 delinquent, and the more months the borrower will have derogatory credit rating.

14       41. Wells Fargo’s failure to honor its obligations under HAMP and its  
 15 TPP Contracts leaves homeowners in long-term limbo, unsure if they can save  
 16 their homes, and unable to make rational decisions about the future. Money that  
 17 could be used to fund bankruptcy plans, relocation costs, short sales, or other  
 18 means of curing default continues to be paid in TPP payments that stretch on  
 19 indefinitely.

20       **E. PLAINTIFF’S EXPERIENCE WITH WELLS FARGO**

21       42. Ms. Kennedy experienced the forgoing problems firsthand. In May  
 22 2008, she refinanced her home, located at 13723 Ocean Gate Avenue in  
 23 Hawthorne, California.

24       43. Over the next year, Ms. Kennedy experienced financial difficulty.  
 25 Worried by her financial situation, Ms. Kennedy contacted the servicer for her  
 26 home loan, Wells Fargo, to find out whether she could lower her payments. In  
 27 May 2009, Wells Fargo referred Ms. Kennedy to an in-house, non-HAMP  
 28 forbearance plan.

1       44. Under this plan, Ms. Kennedy's payments would be temporarily  
2 lowered for six months, and she would make a large payment in the seventh  
3 month. Ms. Kennedy agreed to this plan and authorized automatic bill payment  
4 from her deposit account. Despite this arrangement, Wells Fargo canceled the  
5 plan for late payment.

6       45. Ms. Kennedy applied for another forbearance plan, but was removed  
7 from the program under similar circumstances. After both forbearance plans  
8 failed, Ms. Kennedy decided to apply for a HAMP modification.

9       46. In or around November 2009, Ms. Kennedy applied for a HAMP  
10 modification with Wells Fargo. She sent in a complete application and accurately  
11 reported her monthly income over the phone.

12       47. Wells Fargo determined that Ms. Kennedy qualified for HAMP and  
13 offered her a trial plan. Under the trial plan, Ms. Kennedy would make payments  
14 of \$1,135 for three months and comply with a series of other requirements set by  
15 HAMP, such as verifying her reported income. In return, Wells Fargo would  
16 permanently modify her loan using HAMP guidelines. Ms. Kennedy made her  
17 first trial plan payment in December 2009.

18       48. Over the next three months, Ms. Kennedy made her trial payments on  
19 time, verified her reported income and complied with all other terms of the  
20 agreement. In a letter dated March 31, 2010, Wells Fargo stated that Ms.  
21 Kennedy had completed the trial period and was approved for a permanent HAMP  
22 modification.

23       49. However, the modified payment amount in the documentation  
24 provided by Wells Fargo differed significantly from the trial period payment. Ms.  
25 Kennedy was making monthly payments of \$1,135 in her trial period plan, but the  
26 permanent modification monthly payment amount was set at \$2,058.38, an  
27 amount much greater than the trial period payment and more than 31% of Ms.  
28 Kennedy's gross monthly income.

1       50. The letter that Ms. Kennedy received from Wells Fargo stated that  
2 the final modification payment had increased due to a change in her income at the  
3 time of final approval. But, Ms. Kennedy's financial situation had not changed  
4 over this time period. At all relevant times, she was employed as a full-time legal  
5 secretary, and her income did not increase. Because her income did not change,  
6 the verification she provided Wells Fargo matched exactly the income information  
7 she had provided over the phone, and her payment on the permanent modification  
8 likewise should have matched her payment in the trial plan.

9       51. After receiving the letter, Ms. Kennedy called Robin Webb, the  
10 Wells Fargo employee who had sent it. During the course of their conversation,  
11 Ms. Webb made references to financial details, such as a large car payment, that  
12 did not match Ms. Kennedy's situation. When Ms. Kennedy directed Ms. Webb's  
13 attention to the errors, Ms. Webb acknowledged that the permanent modification  
14 was based on the wrong financial information.

15       52. Ms. Webb told Ms. Kennedy not to sign and return the modification  
16 agreement. Instead, she instructed Ms. Kennedy to send in a new form with her  
17 financial information. Upon receipt of the form, Wells Fargo would put Ms.  
18 Kennedy's application on the "fast-track" to permanent modification under the  
19 appropriate terms. This process would take about four weeks, and then Ms.  
20 Kennedy would have a permanent modification on the original terms.

21       53. Ms. Kennedy did as Ms. Webb instructed her, but in May, Ms.  
22 Kennedy received a letter from Wells Fargo stating that her loan modification  
23 request had been denied because she did not mail the agreement back to Wells  
24 Fargo.

25       54. Later that month, Ms. Kennedy was contacted by Wells Fargo about  
26 her loan. During that discussion, Ms. Kennedy was told that she was not in the  
27 HAMP program and did not have an application on file. She was told that she  
28 could not get a HAMP modification because she had failed to return the

1 modification agreement. Eventually, Ms. Kennedy accepted a non-HAMP  
2 modification from Wells Fargo on less advantageous terms.

3 **VII. CLASS ACTION ALLEGATIONS**

4 55. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff  
5 Kathleen Kennedy brings this action as a class action on behalf of herself and all  
6 others similarly situated as members of a proposed nationwide class. This  
7 putative class (hereinafter the "Plaintiff Class") is defined as follows:

8 All borrowers whose loans have been serviced by Wells Fargo, who  
9 have been eligible for permanent modification under the terms of  
10 HAMP, and whose loan Wells Fargo has not permanently modified,  
11 because 1) they did not receive a permanent loan modification after  
12 complying with their obligations under HAMP, as conveyed to them  
13 by Wells Fargo either orally or in writing; or 2) they received a  
14 permanent modification, but Wells Fargo withdrew it after the  
15 permanent modification already was in effect.

16 56. This putative class action meets the requirements of Fed. R. Civ. P.  
17 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3).

18 57. California law applies to all Plaintiff Class members nationwide  
19 because Plaintiff is informed and believes that the conduct at issue emanated from  
20 California.

21 58. All members of the class have been subject to and affected by the  
22 same conduct. Wells Fargo has engaged in a common course of conduct with  
23 respect to all HAMP modifications.

24 59. Plaintiff is informed and believes and on that basis alleges that the  
25 Plaintiff Class is so numerous that joinder of the individual claims is  
26 impracticable. The precise number of the Plaintiff Class and the identities of the  
27 members are ascertainable from the business records of Wells Fargo.

28 60. Questions of law and fact common to the Plaintiff Class exist and

1 predominate over questions affecting only individual class members. These  
2 common legal and factual questions include, but are not limited to:

- 3 a. Whether Wells Fargo violated the Rosenthal Fair Debt  
4 Collection Practices Act, Cal. Civ. Code §§ 1788, *et seq.*  
5 (“Rosenthal Act”), by, without limitation, making false,  
6 deceptive or misleading representations in connection with the  
7 collection of any debt, using false representations or deceptive  
8 means to collect or attempt to collect on any debt, and using  
9 unfair or unconscionable means to collect or attempt to collect  
10 any debt;
- 11 b. Whether Wells Fargo’s acts described above are unlawful,  
12 unfair, or fraudulent business practices in violation of the  
13 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et  
seq.* (“UCL”);
- 14 c. Whether Wells Fargo has violated the duty of good faith and  
15 fair dealing, inherent in all contracts, including whether the  
16 failure to provide permanent HAMP modifications constitutes  
17 a breach of the covenant of good faith and fair dealing;
- 18 d. Whether Wells Fargo breached the TPP Contract with  
19 members of the Plaintiff Class by failing to offer them  
20 permanent HAMP modifications at the close of their  
21 successfully completed trial periods;
- 22 e. Whether Wells Fargo was negligent in its conduct alleged  
23 herein;
- 24 f. Whether Wells Fargo made representations that Plaintiff and  
25 members of the Plaintiff Class would receive a permanent  
26 HAMP modification, representations upon which Plaintiff and  
27 Plaintiff Class members reasonably relied to their detriment;

1 and

2 g. The nature and extent of relief to Plaintiff and the Plaintiff  
3 Class, including declaratory judgment, accounting, injunctive  
4 relief, restitution, and other remedies to which Plaintiff and the  
5 other members of the Plaintiff Class are entitled.

6 61. Plaintiff's claims are typical of the claims of the Plaintiff Class as the  
7 claims arise from the same course of conduct by Wells Fargo, and the relief  
8 sought is common. Each member of the Plaintiff Class requested or was  
9 otherwise eligible for permanent modification under HAMP and met with the  
10 same failure. Each member of the Plaintiff Class has the same or substantially  
11 similar claims as Plaintiff for relief against these practices. As described above  
12 and below, the claims arise from the same course of conduct by Wells Fargo, and  
13 the relief sought is common.

14 62. Plaintiff is an adequate representative of the Plaintiff Class because:  
15 (a) her interests do not conflict with the interests of the individual members of the  
16 Plaintiff Class she seeks to represent; (b) she has retained counsel who are  
17 competent and experienced in complex class action litigation; and (c) she intends  
18 to prosecute this action vigorously. The interests of the members of the Plaintiff  
19 Class will be fairly and adequately protected by Plaintiff and her counsel.

20 63. The class action device is superior to other available means for the  
21 fair and efficient adjudication of the claims of Plaintiff and the Plaintiff Class.  
22 Because the economic damages suffered by the individual Plaintiff Class members  
23 may be relatively modest, albeit significant, compared to the expense and burden  
24 of individual litigation, requiring members of the Plaintiff Class to seek redress  
25 individually for the wrongful conduct alleged herein would be impracticable.

26 64. Additionally, prosecuting separate actions by individual Plaintiff  
27 Class members would create a risk of varying adjudications with respect to  
28 individual Plaintiff Class members that would establish incompatible standards of

1 conduct for Wells Fargo. Wells Fargo has acted on grounds that apply generally  
 2 to the Plaintiff Class members, so that final injunctive relief is appropriate with  
 3 respect to the Plaintiff Class as a whole.

4 65. There will be no undue difficulty in the management of this litigation  
 5 as a class action. Plaintiff's and the Plaintiff Class members' common claims can  
 6 be economically adjudicated only in a class action proceeding, thus promoting  
 7 judicial efficiency and avoiding multiple trials and inconsistent judgments.

8 66. Plaintiff believes that notice to the Plaintiff Class is necessary and  
 9 proposes that notice of this class action be provided by individual mailings to  
 10 Plaintiff Class members and/or by publication in national publications.

11 **FIRST CAUSE OF ACTION**

12 **BREACH OF CONTRACT**

13 67. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,  
 14 realleges each and every preceding and subsequent allegation as if fully set forth  
 15 in this Cause of Action.

16 68. Plaintiff and Plaintiff Class members entered into written or oral  
 17 Trial Period Plan ("TPP") Contracts with Wells Fargo. Wells Fargo made TPP  
 18 offers, through formal TPP Contracts, oral TPP offers, or written TPP offers.  
 19 Plaintiff and Plaintiff Class members formed binding and enforceable agreements  
 20 when they executed written TPP Contracts and/or when they made payments  
 21 under a TPP offered orally or in writing by Wells Fargo. Payments in accordance  
 22 with an executed TPP Contract or TPP offer constitute consideration. In the  
 23 alternative, the TPP Contracts or offers, coupled with Plaintiff's payments,  
 24 constitute implied contracts.

25 69. Wells Fargo failed to perform under the TPP Contracts with Plaintiff  
 26 and Plaintiff Class members. Wells Fargo's refusal to perform its duties under the  
 27 TPP Contracts was unlawful, without justification and/or excuse, and constituted a  
 28 total and material breach of the TPP Contracts between the parties.

1       70.   Wells Fargo breached the TPP Contracts with Plaintiff Class  
2 members by failing to offer them permanent HAMP modifications after they made  
3 their TPP payments, properly verified their reported income and complied with all  
4 other terms of the TPP Contract.

5       71. Plaintiff and all members of the Plaintiff Class gave consideration  
6 that was fair and reasonable, and have performed all conditions, covenants, and  
7 promises required to be performed under their contracts with Wells Fargo.  
8 Consideration provided by Plaintiff Class members includes, but is not limited to,  
9 providing verification of income, making adjusted payments, increased  
10 indebtedness, suffering negative credit reporting, and making insurance payments  
11 into an escrow account

12        72. As a result of Wells Fargo's breach of the TPP Contracts, Plaintiff  
13 and Plaintiff Class members suffered and will continue to suffer reasonable and  
14 foreseeable consequential damages resulting from such breaches, including  
15 payment of increased interest, longer loan payoff times, higher principal balances,  
16 deterrence from seeking other remedies to address their default and/or  
17 unaffordable mortgage payments, damage to their credit, additional income tax  
18 liability, costs and expenses incurred to prevent or fight foreclosure, and other  
19 damages for breach of contract.

20       73. Plaintiff and the Plaintiff Class have been damaged by Wells Fargo's  
21 breach of the TPP Contracts in an amount to be proven at trial.

## **SECOND CAUSE OF ACTION**

## **VIOLATION OF STATE FAIR DEBT COLLECTION ACT**

(Violation of the Rosenthal Fair Debt Collection Practices Act,  
Cal. Civ. Code §§ 1788, *et seq.*)

26 74. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,  
27 realleges each and every preceding and subsequent allegation as if fully set forth  
28 in this Cause of Action.

75. Wells Fargo is a “debt collector” within the meaning of Cal. Civil Code § 1788.2(c). The monies allegedly owed by the members of the proposed classes are “debts” within the meaning of Cal. Civil Code § 1788.2(d).

76. California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788, *et seq.* ("Rosenthal Act"), incorporates by reference, and requires compliance with, the provisions of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* Cal. Civ. Code § 1788.17.

77. By the acts and practices described herein, Wells Fargo has violated these laws, as follows, without limitation:

- a. Making false, deceptive, or misleading representations in connection with the collection of a debt, 15 U.S.C. § 1692e;
- b. Making false representations or using deceptive means to collect or attempt to collect on a debt, 15 U.S.C. § 1692e(10); and
- c. Using unfair or unconscionable means to collect or attempt to collect a debt, 15 U.S.C. § 1692f.

78. Pursuant to California Civil Code sections 1788.30 and 1788.17, Plaintiff and the Plaintiff Class are entitled to recover actual damages sustained as a result of Wells Fargo's violations of the Rosenthal Act. Such damages include, without limitation, monetary losses and damages and emotional distress suffered; the damages are in an amount to be proven at trial. In addition, pursuant to California Civil Code sections 1788.30 and 1788.17, because Wells Fargo willingly and knowingly violated the Rosenthal Act, Plaintiff and the Plaintiff Class are entitled to recover penalties of at least \$1,000 per violation as provided for in the Rosenthal Act.

### **THIRD CAUSE OF ACTION**

## **VIOLATION OF THE UNFAIR COMPETITION LAW**

(Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

28 | 79. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,

1 realleges each and every preceding and subsequent allegation as if fully set forth  
2 in this Cause of Action.

3       80. The California Unfair Competition Law, Cal. Bus. & Prof. Code §§  
4 17200, *et seq.* (“UCL”), defines unfair competition to include any “unlawful,”  
5 “unfair,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code §  
6 17200. The UCL authorizes this Court to issue whatever orders or judgments may  
7 be necessary to prevent unfair or unlawful practices, or to “restore to any person  
8 in interest any money or property, real or personal, which may have been acquired  
9 by means of such unfair competition.” Cal. Bus. & Prof. Code § 17203.

10      81. Wells Fargo’s acts and practices alleged herein are unlawful business  
11 practices in that they violate state law, including but not limited to violations of  
12 the Rosenthal Act, as alleged in this Complaint.

13      82. Wells Fargo’s acts and practices alleged herein constitute unfair  
14 business practices, including, without limitation, the following practices:

- 15       a.     Failing to perform loan servicing functions consistent with its  
16 responsibilities to Plaintiff and the Plaintiff Class and its  
17 responsibilities under HAMP;
- 18       b.     Failing to properly supervise its agents and employees,  
19 including without limitation, its loss mitigation and collection  
20 personnel, foreclosure personnel, and personnel implementing its  
21 modification programs;
- 22       c.     Failing to permanently modify loans and/or provide  
23 alternatives to foreclosure and using unfair means to keep Plaintiff  
24 and the Plaintiff Class in temporary modification contracts,  
25 including, without limitation, routinely demanding information it  
26 already has and failing to communicate accurately or consistently  
27 with borrowers about the status of their loan modification  
28 applications;

d. Making inaccurate calculations and determinations of Plaintiff's and the Plaintiff Class members' eligibility for a permanent modification; and

e. Engaging in acts and practices that prolong the HAMP process.

83. Wells Fargo's acts and practices alleged herein constitute fraudulent business practices, including, without limitation, the following practices:

a. Wells Fargo has made and continues to make misrepresentations and omissions of material fact that induce Plaintiff and Plaintiff Class members to enter into TPP Contracts in order to obtain a permanent modification; and

b. Wells Fargo has made and continues to make misrepresentations and omissions of material fact regarding the status of Plaintiff's and Plaintiff Class members' loan modifications and loan payments.

84. Wells Fargo's misrepresentations and omissions are likely to deceive the reasonable consumer.

85. Wells Fargo's misrepresentations are objectively material to the reasonable consumer; reliance upon such representations therefore may be presumed as a matter of law.

86. Plaintiff reasonably and justifiably relied on such misrepresentations and omissions of material fact regarding the status of her loan modifications and loan payments.

87. As a result of these violations and unlawful, unfair, and fraudulent business practices, Plaintiff and Plaintiff Class members suffered injury in fact and lost money and property, including but not limited to, payment of increased interest, longer loan payoff times, higher principal balances, and payment of other charges collected by Wells Fargo.

28 || 88. Wells Fargo, through its acts of unfair competition and unlawful,

1 unfair, and fraudulent business practices, has acquired money from Plaintiff and  
2 Plaintiff Class members. Thus, Plaintiff and Plaintiff Class members request that  
3 this Court restore that money to them and order disgorgement.

4 89. Pursuant to California Business and Professions Code sections  
5 17200, *et seq.*, Plaintiff and the Plaintiff Class are entitled to enjoin Wells Fargo's  
6 practice of unfairly denying and failing to enter into permanent loan modifications  
7 for homeowners who have complied with the contractual obligations of the TPP  
8 Contract. Plaintiff and Plaintiff Class members seek such other and further relief  
9 as the Court may deem proper and just.

## **FOURTH CAUSE OF ACTION**

## **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

12       90. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,  
13 realleges each and every preceding and subsequent allegation as if fully set forth  
14 in this Cause of Action.

15        91. Under common law, a covenant of good faith and fair dealing is  
16 implied in every contract, including the written and oral TPP Contracts described  
17 above, that prevents one contracting party from unfairly frustrating the other  
18 party's right to receive the benefits of the contract. Wells Fargo is obligated to act  
19 in good faith and deal fairly with each borrower who enters into a TPP Contract.

20       92.    Wells Fargo has violated and continues to violate this covenant of  
21 good faith and fair dealing in its TPP Contracts with Plaintiff and Plaintiff Class  
22 members by, *inter alia*:

- a. Failing to perform loan servicing functions consistent with its responsibilities;
- b. Failing to properly supervise its agents and employees, including without limitation, its loss mitigation and collection personnel, foreclosure personnel, and personnel implementing its modification programs;

c. Failing to permanently modify loans and/or provide alternatives to foreclosure and using unfair means to keep Plaintiff and Plaintiff Class members in temporary modification contracts, including, without limitation, routinely demanding information it already has and failing to communicate accurately or consistently with borrowers about the status of their loan modification applications; and

d. Making inaccurate calculations and determinations of eligibility for trial or permanent modifications.

10       93. Plaintiff and Plaintiff Class members remain ready, willing, and able  
11 to enter into a permanent HAMP modification.

12        94. As a result of Wells Fargo's breach of this implied covenant, Plaintiff  
13 and Plaintiff Class members suffered and will continue to suffer reasonable and  
14 foreseeable consequential damages resulting from such breaches, including  
15 payment of increased interest, longer loan payoff times, higher principal balances,  
16 and other damages for breach of contract. Plaintiff and Plaintiff Class members  
17 have been damaged by Wells Fargo's breach of the implied covenant of good faith  
18 and fair dealing in an amount to be proven at trial.

## **FIFTH CAUSE OF ACTION**

## NEGLIGENCE

21       95. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,  
22 realleges each and every preceding and subsequent allegation as if fully set forth  
23 in this Cause of Action.

24        96.    Wells Fargo owed a duty of due care to Plaintiff and Plaintiff Class  
25 members to competently process loan modifications in accordance with HAMP,  
26 as alleged herein.

27       97.   Wells Fargo breached its duty of care to Plaintiff and Plaintiff Class  
28 members by failing to comply with HAMP, as alleged herein.

1       98.   Wells Fargo's breach of its duties is the direct, legal, and proximate  
2 cause of Plaintiff's and Plaintiff Class members' injuries.

3        99. As a result of Wells Fargo's breach of its duty, Plaintiff and Plaintiff  
4 Class members suffered and will continue to suffer reasonable and foreseeable  
5 consequential damages resulting from such breaches, including payment of  
6 increased interest, longer loan payoff times, higher principal balances, and other  
7 damages for breach of contract. Plaintiff and Plaintiff Class members have been  
8 damaged by Wells Fargo's negligence in an amount to be proven at trial.

## **SIXTH CAUSE OF ACTION**

## **PROMISSORY ESTOPPEL, IN THE ALTERNATIVE**

11       100. Plaintiff, on behalf of herself and on behalf of the Plaintiff Class,  
12 realleges each and every preceding and subsequent allegation as if fully set forth  
13 in this Cause of Action.

14        101. Wells Fargo, by way of the TPP Contracts described above, made  
15 representations to Plaintiff and Plaintiff Class members that if they agreed to the  
16 terms of a TPP proposal, either by returning an executed TPP Contract, or making  
17 the proposed trial payments, they would receive a permanent HAMP modification.

18 102. Wells Fargo's TPP Contracts were intended to induce Plaintiff and  
19 Plaintiff Class members to rely on them and make monthly TPP payments.  
20 Plaintiff and Plaintiff Class members did, indeed, rely on Wells Fargo's  
21 representations, by submitting TPP payments. The reliance of Plaintiff and  
22 Plaintiff Class members was reasonable.

23        103. The reliance of Plaintiff and Plaintiff Class members was to their  
24 detriment. For example, those who complied with the TPP Contracts but were  
25 denied a permanent modification, and those who have yet to receive permanent  
26 HAMP modifications and are still making TPP payments, have lost the  
27 opportunity to fund other strategies to deal with their default and avoid  
28 foreclosure.

104. Plaintiff and Plaintiff Class members have been damaged by Wells Fargo's actions and representations in an amount to be proven at trial.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Wells Fargo as follows:

1. An order certifying the Plaintiff Class under Federal Rules of Civil Procedure, Rule 23, and appointing Plaintiff Kathleen Kennedy to be class representative and her counsel to be class counsel;

2. An award to Plaintiff and Plaintiff Class members of actual and statutory damages in an amount according to proof for Wells Fargo's violations of the Rosenthal Act, breach of contract, breach of covenant of good faith and fair dealing, negligence, and promissory estoppel;

3. An order requiring Wells Fargo to make restitution to Plaintiff and Plaintiff Class members pursuant to California Business and Professions Code section 17203;

4. A judgment declaring Wells Fargo's acts and practices complained of herein to constitute a breach of contract and a breach of the covenant of good faith and fair dealing and to be unlawful, unfair, and fraudulent, as well as a declaration that Wells Fargo is required by the doctrine of promissory estoppel to offer permanent modifications to class members;

5. A permanent order enjoining Wells Fargo's agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiff and Plaintiff Class members by engaging in the unlawful, unfair and fraudulent practices alleged herein and ordering specific performance of Wells Fargo's contractual obligations, under the TPP Contracts, together with other relief required by contract and law;

6. An award to Plaintiff of the costs of this action, including the fees and costs of experts, together with reasonable attorney's fees, cost and expenses;

7. An award to Plaintiff and Plaintiff Class members of pre-judgment

1 interest on all sums collected; and

2 8. Such other and further relief as this Court finds necessary and proper.

3 Dated: May 31, 2011

4 Respectfully submitted,

5 STRANGE & CARPENTER  
6 PUBLIC COUNSEL

7 By:   
8 Gretchen Carpenter  
9 Attorneys for Plaintiff

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial by jury.

12 Dated: May 31, 2011

13 Respectfully submitted,

14 STRANGE & CARPENTER  
15 PUBLIC COUNSEL

16 By:   
17 Gretchen Carpenter  
18 Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Dean D. Pregerson and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

**CV11- 4635 DDP (AGRx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

Brian R. Strange, 103252 Tel: (310) 207-5055  
 Gretchen Carpenter, 180525  
 STRANGE & CARPENTER  
 12100 Wilshire Blvd., Suite 1900  
 Los Angeles, California 90025

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

KATHLEEN KENNEDY, on behalf of herself and all others  
 similarly situated

PLAINTIFF(S)

v.

CASE NUMBER

CV11 04635DDP (AGRx)

WELLS FARGO BANK, N.A., d/b/a WELLS FARGO HOME  
 MORTGAGE and DOES 1-10

## SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): WELLS FARGO BANK, N.A. d/b/a WELLS FARGO HOME MORTGAGE and DOES 10-10

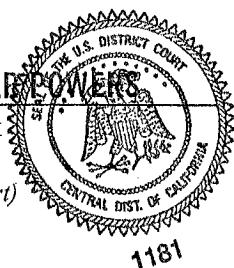
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian R. Strange, Strange & Carpenter, whose address is 12100 Wilshire Blvd., Suite 1900, Los Angeles, California 90025. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY 31 2011By: CHRISTOPHER POWERS  
Deputy Clerk

(Seal of the Court)



1181

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

|  |   |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
|--|---|--|---|--|---|--|---|--|--|--|--|---|--|--|--|--|--|--|--|--|--|--|--|---|---|--|--|--|--|--|--|
| <b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )<br>KATHLEEN KENNEDY, on behalf of herself and all others similarly situated   | <b>DEFENDANTS</b><br>WELLS FARGO BANK, N.A., d/b/a WELLS FARGO HOME MORTGAGE and DOES 1-10  |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>(b) Attorneys</b> (Firm Name, Address and Telephone Number.<br>If you are representing yourself, provide same.)<br><br>Gretchen Carpenter, 180525 Tel: (310) 207-5055<br>STRANGE & CARPENTER<br>12100 Wilshire Blvd., Ste. 1900, Los Angeles, CA 90025  | <b>Attorneys (If Known)</b><br><br>Unknown  |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)   | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only<br>(Place an X in one box for plaintiff and one for defendant.)   |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <input type="checkbox"/> 1 U.S. Government Plaintiff   | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)   | Citizen of This State  | <b>PTF</b><br><input checked="" type="checkbox"/> 1   | <b>DEF</b><br><input type="checkbox"/> 1   | Incorporated or Principal Place of Business in this State   | <b>PTF</b><br><input type="checkbox"/> 4   | <b>DEF</b><br><input checked="" type="checkbox"/> 4   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <input type="checkbox"/> 2 U.S. Government Defendant   | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   | Citizen of Another State   | <input type="checkbox"/> 2  | <input type="checkbox"/> 2   | Incorporated and Principal Place of Business in Another State   | <input type="checkbox"/> 5   | <input type="checkbox"/> 5  |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
|  |   | Citizen or Subject of a Foreign Country  | <input type="checkbox"/> 3  | <input type="checkbox"/> 3   | Foreign Nation  | <input type="checkbox"/> 6   | <input type="checkbox"/> 6  |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>IV. ORIGIN</b> (Place an X in one box only.)  | <b>5</b> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge   |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)  | <b>MONEY DEMANDED IN COMPLAINT:</b> \$ over \$5,000,000   |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  | This class action is filed pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1332(d)(2).   |  |   |  |   |  |   |  |  |  |  |   |  |  |  |  |  |  |  |  |  |  |  |   |   |  |  |  |  |  |  |
| <b>VII. NATURE OF SUIT</b> (Place an X in one box only.)   | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; vertical-align: top;"> <b>OTHER STATUTES</b><br/> <input type="checkbox"/> 400 State Reapportionment<br/> <input type="checkbox"/> 410 Antitrust<br/> <input type="checkbox"/> 430 Banks and Banking<br/> <input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br/> <input type="checkbox"/> 460 Deportation<br/> <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br/> <input type="checkbox"/> 480 Consumer Credit<br/> <input type="checkbox"/> 490 Cable/Sat TV<br/> <input type="checkbox"/> 810 Selective Service<br/> <input type="checkbox"/> 850 Securities/Commodities/ Exchange<br/> <input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br/> <input type="checkbox"/> 890 Other Statutory Actions<br/> <input type="checkbox"/> 891 Agricultural Act<br/> <input type="checkbox"/> 892 Economic Stabilization Act<br/> <input type="checkbox"/> 893 Environmental Matters<br/> <input type="checkbox"/> 894 Energy Allocation Act<br/> <input type="checkbox"/> 895 Freedom of Info. Act<br/> <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br/> <input type="checkbox"/> 950 Constitutionality of State Statutes       </td> <td style="width: 25%; vertical-align: top;"> <b>CONTRACT</b><br/> <input type="checkbox"/> 110 Insurance<br/> <input type="checkbox"/> 120 Marine<br/> <input type="checkbox"/> 130 Miller Act<br/> <input type="checkbox"/> 140 Negotiable Instrument<br/> <input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment<br/> <input type="checkbox"/> 151 Medicare Act<br/> <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)<br/> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br/> <input type="checkbox"/> 160 Stockholders' Suits<br/> <input checked="" type="checkbox"/> 190 Other Contract<br/> <input type="checkbox"/> 195 Contract Product Liability<br/> <input type="checkbox"/> 196 Franchise       </td> <td style="width: 25%; vertical-align: top;"> <b>TORTS</b><br/> <b>PERSONAL INJURY</b><br/> <input type="checkbox"/> 310 Airplane<br/> <input type="checkbox"/> 315 Airplane Product Liability<br/> <input type="checkbox"/> 320 Assault, Libel &amp; Slander<br/> <input type="checkbox"/> 330 Fed. Employers' Liability<br/> <input type="checkbox"/> 340 Marine<br/> <input type="checkbox"/> 345 Marine Product Liability<br/> <input type="checkbox"/> 350 Motor Vehicle Product Liability<br/> <input type="checkbox"/> 355 Motor Vehicle Product Liability<br/> <input type="checkbox"/> 360 Other Personal Injury<br/> <input type="checkbox"/> 362 Personal Injury-Med Malpractice<br/> <input type="checkbox"/> 365 Personal Injury-Product Liability<br/> <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability       </td> <td style="width: 25%; vertical-align: top;"> <b>TORTS</b><br/> <b>PERSONAL PROPERTY</b><br/> <input type="checkbox"/> 370 Other Fraud<br/> <input type="checkbox"/> 371 Truth in Lending<br/> <input type="checkbox"/> 380 Other Personal Property Damage<br/> <input type="checkbox"/> 385 Property Damage Product Liability       </td> <td style="width: 25%; vertical-align: top;"> <b>PRISONER PETITIONS</b><br/> <b>BANKRUPTCY</b><br/> <input type="checkbox"/> 422 Appeal 28 USC 158<br/> <input type="checkbox"/> 423 Withdrawal 28 USC 157       </td> <td style="width: 25%; vertical-align: top;"> <b>LABOR</b><br/> <b>PETITIONS</b><br/> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus<br/> <input type="checkbox"/> 530 General<br/> <input type="checkbox"/> 535 Death Penalty<br/> <input type="checkbox"/> 540 Mandamus/ Other<br/> <input type="checkbox"/> 550 Civil Rights<br/> <input type="checkbox"/> 555 Prison Condition       </td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="vertical-align: top;"> <b>FORFEITURE</b><br/> <b>PENALTY</b><br/> <b>CIVIL RIGHTS</b><br/> <input type="checkbox"/> 441 Voting<br/> <input type="checkbox"/> 442 Employment<br/> <input type="checkbox"/> 443 Housing/Accommodations<br/> <input type="checkbox"/> 444 Welfare<br/> <input type="checkbox"/> 445 American with Disabilities - Employment       </td> <td style="vertical-align: top;"> <b>PROPERTY RIGHTS</b><br/> <input type="checkbox"/> 610 Agriculture<br/> <input type="checkbox"/> 620 Other Food &amp; Drug<br/> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881       </td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="vertical-align: top;"> <b>SOCIAL SECURITY</b><br/> <input type="checkbox"/> 630 Liquor Laws<br/> <input type="checkbox"/> 640 R.R. &amp; Truck<br/> <input type="checkbox"/> 650 Airline Regs<br/> <input type="checkbox"/> 660 Occupational Safety /Health       </td> <td style="vertical-align: top;"> <b>PROPERTY RIGHTS</b><br/> <input type="checkbox"/> 820 Copyrights<br/> <input type="checkbox"/> 830 Patent<br/> <input type="checkbox"/> 840 Trademark       </td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="vertical-align: top;"> <b>FEDERAL TAX SUITS</b><br/> <input type="checkbox"/> 861 HIA (1395ff)<br/> <input type="checkbox"/> 862 Black Lung (923)<br/> <input type="checkbox"/> 863 DIWC/DIWW (405(g))<br/> <input type="checkbox"/> 864 SSID Title XVI<br/> <input type="checkbox"/> 865 RSI (405(g))       </td> <td style="vertical-align: top;"> <b>SOCIAL SECURITY</b><br/> <input type="checkbox"/> 861 HIA (1395ff)<br/> <input type="checkbox"/> 862 Black Lung (923)<br/> <input type="checkbox"/> 863 DIWC/DIWW (405(g))<br/> <input type="checkbox"/> 864 SSID Title XVI<br/> <input type="checkbox"/> 865 RSI (405(g))       </td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="vertical-align: top;"> <b>FEDERAL TAX SUITS</b><br/> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br/> <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609       </td> <td style="vertical-align: top;"> <b>FEDERAL TAX SUITS</b><br/> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br/> <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609       </td> </tr> </table> | <b>OTHER STATUTES</b><br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/ Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Act<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Info. Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes | <b>CONTRACT</b><br><input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. 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CV11 04635

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): 2:10-cv-3792-DSF-PLA, 2:10-cv-8836-DDP-SS

## Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County        |   |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
|                           | San Francisco County  |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County        | San Francisco County  |

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Christopher Caputo Date May 31, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))   |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))  |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))   |